

February 7, 2018

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **NOTICE OF EX PARTE**
WT Docket No. 10-208: *Universal Service Reform - Mobility Fund*
WC Docket No. 10-90: *Connect America Fund*

Dear Ms. Dortch:

Competitive Carriers Association (“CCA”)¹ writes to supplement the record in the above-mentioned proceedings. On October 18, 2017, the Federal Communications Commission (“FCC” or “Commission”) released a Public Notice (“Challenge Process Notice”) seeking comment on procedures and technical implementation of the Mobility Fund II (“MF II”) challenge process. Among other issues related to the MF II challenge process, the Challenge Process Notice recognized “that some providers may reduce the speed of data on their networks for network management purposes. . .,” and proposed “to allow a challenged party to submit data that identify a particular device that a challenger used to conduct its speed tests as having been subjected to reduced speeds, along with the precise date and time the speed reductions were in effect on the challenger’s device.”² When considering this proposal, CCA reminds the Commission to remain steadfast in its goals for conducting the challenge process, including to fuel robust participation and ensure that the determination of area eligibility is as accurate as possible, and to adopt challenge process procedures that are achievable and administrable.³

The purpose of the FCC’s one-time data collection and subsequent challenge process is to correct the inaccuracies of Form 477 data. CCA has long stated that the FCC’s coverage data, based on advertised speeds as reported in its Form 477, is not standardized nor reliable, and therefore does not reflect on-the-ground coverage.⁴ As noted throughout the record in this proceeding and by Congress, you cannot map what you cannot measure.⁵

¹ CCA is nation’s the leading association for competitive wireless providers and stakeholders across the United States. Its membership includes nearly 100 competitive wireless providers ranging from small, rural carriers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² *Comment Sought on Mobility Fund Phase II Challenge Process and Procedures and Technical Implementation*, Public Notice, WC Docket No. 10-90, WT Docket No. 10-208 at ¶ 14 (rel. Oct. 18, 2017) (“Challenge Process Notice”).

³ *See id.* ¶ 4.

⁴ *See, e.g.*, Comments of Competitive Carriers Association, WT Docket No. 10-208, WC Docket No. 10-90 (filed Apr. 26, 2017) (“CCA Comments”); Reply Comments of Competitive Carriers Association, WT Docket No. 10-208, WC Docket No. 10-90 (filed May 11, 2017) (“CCA Reply Comments”).

⁵ House Energy and Commerce Committee Subcommittee on Communications and Technology Chairman Blackburn (R-TN) has noted that, “we must accurately collect and aggregate data ... but doing so is a fool’s errand without

For these reasons, CCA objected to the use of Form 477 data to determine areas eligible for MF II support. In its Order on Reconsideration, the FCC wisely decided to no longer rely on Form 477 data to determine what areas are served or unserved for purposes of distributing MF II support. Instead, the Commission rightly adopted a one-time data collection of carriers' 4G LTE service with a robust challenge process to "be administratively efficient, fiscally responsible, and... enable [the Commission] to resolve eligible area disputes quickly and expeditiously."⁶ While still skeptical of this approach, CCA withheld its opposition with the hopes that a "robust challenge process"⁷ would help to standardize and perfect any data submitted.⁸

Following on this, the FCC sought comment on the intricacies of this robust challenge process, while carriers collected and filed their data for purposes of the coverage map. In the Challenge Process Notice, the FCC recognizes that many carriers manage their networks by slowing speed or capacity when necessary, and sought comment on a proposal to allow a challenged party to submit data that identify a particular device used to conduct its speed test as having been subjected to reduced speeds (otherwise known as throttling), along with the precise date and time the speed reductions were in effect on the challenger's device. While the record is varied, most commenters oppose the FCC's proposed approach.⁹ Specifically, CCA noted that "[w]hether a carrier engages in throttling for network management purposes should not form part of the consideration of whether an area is eligible for MF II support. Instead, the Commission should take an aggregate approach to coverage speeds in an area, which is consistent with the FCC's goal to collect standardized coverage data."¹⁰

In so doing, the FCC also should consider the varying ways that data is throttled and speed is reduced on a provider's network. First, as the Commission explains in the Challenge Process Notice, data speed often is reduced as a result of common network practices that affect all subscribers independent of the rate plan used. As CTIA explains, the Commission should consider this data in the MF II challenge process to meet its goal of determining consumers' experience,¹¹ and achieve the purpose of the challenge process to deliver coverage maps that "reflect consumer experience in the challenged area."¹² CCA agrees that the FCC must not lose

precise data. This will ensure that private and federal investments are targeted at unserved areas." See, Opening Statement of Hon. Marsha Blackburn, Subcommittee on Communications and Technology, "Broadband: Deploying America's 21st Century Infrastructure" (115 Cong.) (Mar. 21, 2017), *available at* <http://docs.house.gov/meetings/IF/IF16/20170321/105740/HHRG-115-IF16-MState-B001243-20170321.pdf>. See also, Modernizing the FCC Form 477 Program, Further Notice of Proposed Rulemaking, WC Docket No. 11-10 (rel. Aug. 4, 2017).

⁶ See *id.* ¶ 1.

⁷ See, *supra*, note 3.

⁸ See, *Universal Service Fund Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, WT Docket No. 10-208, WC Docket No. 10-90 (rel. Aug. 4, 2017).

⁹ See, e.g., Comments of NTCA – The Rural Broadband Association, WT Docket No. 10-208 (filed Nov. 8, 2017); Reply Comments of NTCA – The Rural Broadband Association, WT Docket No. 10-208 (filed Nov. 29, 2017); Comments of the Rural Wireless Association, WT Docket No. 10-208 (filed Nov. 8, 2017); Reply Comments of the Rural Wireless Association, WT Docket No. 10-208 (filed Nov. 29, 2017); Reply Comments of US Cellular, WT Docket No. 10-208 (filed Nov. 29, 2017).

¹⁰ Comments of Competitive Carriers Association, WC Docket No. 10-90, WT Docket No. 10-208 at 4-5 (filed Nov. 8, 2017).

¹¹ Letter from Matthew Gerst, Assistant Vice President – Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 at 2 (filed Jan. 12, 2018) ("CTIA Letter").

¹² *Id.* at 5.

sight of this primary purpose of this one-time data collection coupled with a challenge process: standardizing the coverage area data. If a consumer experiences *reduced speeds due to common network management processes* in an area, then that speed and coverage information should be reflected in MF II challenge process data. Otherwise, the FCC is undermining the main purpose of the challenge process.

At the same time, however, the FCC must be mindful that providers can reduce network speed as a result of a subscriber expending the data limits of a certain plan. This data could lead to manipulated and varying submissions by a challenger and/or challenged party and should not be allowed in the MF II challenge process. For example, a challenger could knowingly exceed data caps and submit data that was throttled in its entirety, while a respondent could disqualify any data it can prove was throttled as a result of data buckets expended. It is imperative that the Commission recognize the difference in these practices when considering which data is permitted in the challenge process.

In addition, the FCC must ensure that adopting this proposal does not dissuade parties from participating in the challenge process, nor threaten the Commission's fundamental goals to define a carrier's existing coverage in an area, and collect accurate data that encompasses a consumers' experience. The Second Report and Order already requires challengers to "purchase an appropriate service plan" that currently exists for the service area,¹³ as parties supporting the proposal have argued, but CCA urges the FCC to confirm (and possibly provide more guidance) that adopting this proposal will not impose unforeseen and burdensome costs on a challenging party to purchase an excessive number of service plans with throttling and zero-throttling components for each carrier in a service area. For example, CCA's members have estimated that purchasing multiple existing rate-based data plans in only the specific locations likely to be identified as presumptively ineligible for MF II support in a provider's footprint could result in about \$11,000 in required data costs alone for a regional carrier serving about 35,000 square miles to challenge just one nationwide carrier. In light of the fact that the provider would be required to rely on rate-based throttling plans, this estimate also assumes that all data collection is done in the same billing month. As a second example, another CCA member estimates that one carrier could spend nearly \$27,000 just acquire data plans to take a speed test every quarter-kilometer for only half of the roads across a large Midwest state. The FCC must ensure this does not dissuade carriers from participating in the challenge process. Otherwise, the one-time data collection and challenge process, imposing significant time and resource burdens on all carriers, would be done in vain.

What's more, the Commission must recognize that there are no currently available commercial service plans to facilitate the level of data usage that will be required to thoroughly test presumptively ineligible areas. The Commission should therefore consider whether devices purchased for the challenge process should be exempt from rate-based throttling practices. Participating entities understand that they will be responsible for costs associated with testing data plans; however, to facilitate an efficient and robust challenge process, rate-based throttling must be disabled on devices purchased by a challenger for the purpose of conducting the challenge. To do this, a provider likely would be required to change the policy enforcement on an identified device on an unthrottled data plan; such policies commonly exist in networks and are generally used for engineering and network benchmark testing. The carrier would then measure the cost based on actual data usage at the end of the billing cycle. While some carriers may see difficulty in implementing these rate plans for challengers, that difficulty will ensure that devices used in the challenge process are not subject to rate plan-based throttling and instead represent actual customer experience. This would eliminate the need for retroactive investigation by the challenged carrier to determine if a device was slowed due to rate plan-based policy enforcement.

¹³ Universal Service Reform – Mobility Fund, *Order on Reconsideration and Second Report and Order*, WT Docket No. 10-208, ¶ 50 (rel. Aug. 4, 2017) ("Second Report and Order").

Finally, in sum, routine data management effects subscribers regardless of rate plan or data consumption and therefore represents actual customer experience. There are mechanisms by which a subscriber can disable rate plan-based throttling, including by purchasing additional data. This issue is of paramount importance to ensuring that the MF II challenge process adequately identifies eligible areas and distributes limited federal funds to areas where service is needed most. The FCC should therefore carefully review the record and determine that service plans purchased for the sole purpose of the MF II challenge process should avoid rate plan-based throttling.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

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